



STARK LAW

In addition to unlawful kickback arrangements, improper self-referrals are another major area of fraud and abuse in the healthcare industry. The physician self-referral law (“Stark law” – [link to statute](#)) prohibits a physician from referring a Medicare or Medicaid patient for certain types of healthcare services (called “designated health services” or “DHS”) to an entity that the physician (or the physician’s immediate family member) has a financial relationship with, unless a specific exception applies.

For purposes of the Stark law, designated health services (“DHS”) include:

- Clinical laboratory services
- Physical therapy
- Occupational therapy
- Radiology (including MRIs, CTs, x-rays, and ultrasounds)
- Radiation therapy
- Durable medical equipment and supplies
- Parenteral
- Prosthetic devices
- Home health services and supplies
- Outpatient prescription drugs
- Inpatient and outpatient hospital services

A physician has a “financial relationship” for purposes of the Stark law if the physician (or an immediate family member of the physician) has an ownership and investment interest in the entity providing the DHS; or if there is a compensation arrangement between the physician (or an immediate family member) and the entity providing the DHS.

Unlike the AKS, the Stark law is not a criminal statute and does not require proof of specific intent. All that is required for a violation of the Stark law is an act of making a prohibited referral and a request for payment from a federal

healthcare program. Physicians who violate the Stark law are subject to denial of payment for the DHS and may also face additional civil monetary penalties based on their knowledge of the scheme.

The Stark law does contain statutory exceptions to the general self-referral ban, however. These include exceptions for physician services and in-office ancillary services furnished by group and solo practices. Qualification for a Stark exception, however, requires strict adherence to the statutory criteria of the exception. Physicians who fail to follow an exception's criteria will not qualify for the exception regardless of intent.

Claims submitted to the Medicare or Medicaid programs in violation of the Stark law are not eligible for payment. Thus, providers who knowingly submit such claims can be held liable under the False Claims Act.

If you are aware of a potential violation of the Stark law and would like to confidentially speak with one of our attorneys, please email us at wbinfo@ktmc.com or call us at (610) 667-7706. All case evaluations are confidential and free.